

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2940

Introduced by Assembly Member De Leon

February 22, 2008

An act to add Title 25 (commencing with Section 100000) to the Government Code, relating to retirement.

LEGISLATIVE COUNSEL’S DIGEST

AB 2940, as amended, De Leon. Retirement: California Employee Savings Program.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would create the California Employee Savings Program, to be administered by the Public Employees’ Retirement System (PERS), with the intent of promoting greater retirement savings for California private employees in a convenient, low-cost, and portable manner. The bill would require PERS, under this program, to offer one or more individual retirement accounts or individual retirement annuities to eligible employees of all eligible employers, as defined, who participate. *The bill would specify that eligible employees of participating employers are not members of PERS.* The bill would require PERS in initiating and administering the program to, among other things, employ staff and 3rd-party administrators, as necessary, collaborate with various entities in the private sector, recover expenses from contributions or

investment returns, as specified, and create a process to allow an employer to forward employee contributions to the program through the Employment Development Department system currently used to collect payroll taxes. *The bill would authorize the Employment Development Department to seek reimbursement for any administrative costs associated with implementing the program.* The bill would require PERS to make reports ~~to the Legislature and~~ to employers on the progress and status of the program. *The bill would also require PERS to make specified reports to the Legislature, including a report at least 90 days prior to implementing the program, a report if it finds the program economically unfeasible, and annual reports on the status of the program, as specified.* The bill would require PERS to allow employers without retirement plans to contribute and to match employee contributions. *The bill would require PERS to keep program funds and accounts separate from those of PERS and would prohibit the use of funds in the PERS defined benefit plan to implement or administer the program. In addition, the bill would require that all expenses and obligations created by the program be funded by its contributions, returns, and assets, except as the Legislature may appropriate funds for this purpose.* The bill would require PERS to obtain the necessary approvals from federal authorities for the program's implementation in order not to jeopardize the status of existing retirement programs for public employees, and would provide that the program will not be made available until all approvals that PERS deems necessary are obtained. The bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, employees of, and investment managers under contract with, PERS in connection with any decision or action related to the administration of the program. *The bill would make operation of these provisions contingent upon appropriation in the annual Budget Act of moneys sufficient to implement these provisions.* The bill would also make a statement of findings.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

1 (a) Currently, 6 million Californians, ~~41~~ 43 percent of the state's
2 workforce, work at a job that does not offer them a pension or
3 retirement savings plan to supplement social security.

4 (b) Social security payments alone, which average ~~\$901~~ \$1,081
5 per month in California, will not sustain Californians in their
6 retirement. Seniors without savings may be more likely to require
7 government assistance with housing, medical care, and other
8 necessities.

9 (c) Though investments in savings accounts have increased over
10 time, investments from low-income small businesses, or
11 short-tenured and transient employees, are strikingly low and have
12 not increased at the same rate.

13 (d) Nationally, two out of three low-wage workers lack access
14 to an employer-sponsored retirement plan, while only one in four
15 high-wage workers do. Nearly 65 percent of low-income workers,
16 those earning less than \$40,000 per year, do not participate in
17 employer plans, according to the Congressional Budget Office.

18 (e) Only 26 percent of full-time, full-year private sector workers
19 in businesses with fewer than 25 employees participated in a
20 pension plan in 2004, compared with 69 percent of those employed
21 by companies with 500 or more employees. Complexity and cost
22 of administering retirement systems may prevent small companies,
23 in comparison to larger corporations, from creating retirement
24 plans for their employees.

25 (f) Low investment participation rates in retirement plans can
26 also be attributed to a worker losing coverage access after moving
27 into a new job with a new business.

28 (g) Workers today are spending more than they are saving,
29 relying more on credit, and thus accruing debt and putting their
30 future financial security at risk. Nationally, the personal savings
31 rate for individuals has fallen to 0.5 percent of income for 2007.
32 At this rate, even with social security benefits, Californians will
33 not be able to afford retirement.

34 (h) California workers without access to an employer-sponsored
35 retirement plan need a seamless, lifelong savings system, providing
36 them with the opportunity to build their assets and helping them
37 to attain their financial stability and future through a secure,
38 portable savings account.

39 (i) In creating this system, California would supplement existing
40 savings options, at no cost to taxpayers.

(j) The California Employee Savings Program is hereby established by this act to promote expanded retirement security for working Californians' employers' sponsorship of retirement plans for their employees.

SEC. 2. Title 25 (commencing with Section 100000) is added to the Government Code, to read:

TITLE 25. CALIFORNIA EMPLOYEE SAVINGS PROGRAM

100000. For purposes of this title:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Eligible employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in the state, whether for profit or not for profit, but excluding the state, any county, any municipal corporation, or any of its units or instrumentalities, and that satisfies the requirements to establish or participate in a SIMPLE plan or a payroll deposit IRA arrangement. An eligible employer shall only provide services under the program to eligible employees. An eligible employer does not include any employer to the extent that the employer replaces a preexisting retirement plan with a plan provided for by this title.

(c) "Eligible employee" means a person who is an employee of an eligible employer.

(d) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(e) "IRA" means an individual retirement account or individual retirement annuity under Section 408 or 408A of the Internal Revenue Code of 1986.

(f) "Participating employer" means an eligible employer that maintains or participates in a plan or payroll deposit IRA arrangement provided for by this title for eligible employees.

(g) "Payroll deposit IRA arrangement" means an arrangement by which an employer makes its payroll system available to employees as a conduit for transferring salary reduction contributions to IRAs.

(h) "Program" means the California Employee Savings Program established by this title.

1 (i) "SIMPLE plan" means a SIMPLE IRA program under
2 Section 408(p) of the Internal Revenue Code of 1986.

3 (j) "System" means the Public Employees' Retirement System.

4 100002. (a) There is hereby established in the system a
5 retirement savings program known as the California Employee
6 Savings Program with the intent of promoting greater retirement
7 savings for California private employees in a convenient, low-cost,
8 and portable manner. The California Employee Savings Program
9 is a voluntary, universal, portable retirement account for California
10 private employees.

11 (b) The program shall include, as determined by the system,
12 one or more of the following components:

13 (1) One or more SIMPLE IRA plans for the employees of
14 participating employers.

15 (2) One or more payroll deposit IRA arrangements for the
16 employees of participating employers.

17 (3) Other IRAs for employees of participating employers.

18 (c) The elements of the program established pursuant to
19 subdivision (b) shall include, as the system may determine:

20 (1) Prototype or master and prototype plans or IRAs.

21 (2) Multiple employer plans.

22 (3) Group administrative service arrangements that allow eligible
23 employers to achieve economies of scale with respect to their
24 retirement savings arrangements relating to investment, accounting,
25 payroll processing, employee communications, and investor
26 education.

27 (4) Group investment vehicles for the plans or IRAs.

28 (5) Custodial or trustee arrangements for payroll deposit
29 programs or for other plans or IRAs.

30 (d) *Participating employers and their eligible employees do not*
31 *become members of, or participants in, the Public Employees'*
32 *Retirement System. The California Employee Savings Program*
33 *does not create a new or separate public pension or retirement*
34 *system.*

35 100004. The system shall initiate, implement, maintain, and
36 administer the program and, in these capacities, shall:

37 (a) Employ staff and retain and contract with private financial
38 institutions, other financial and service providers, consultants,
39 third-party administrators, and other professionals as necessary.

1 (b) Collaborate and cooperate with private financial institutions,
2 service providers, business, financial, trade, membership, and other
3 organizations to the extent necessary or desirable for the effective
4 and efficient implementation of the program and to maximize
5 outreach to employers and individuals.

6 (c) Cause expenses incurred to initiate, implement, maintain,
7 and administer the program, to be paid from contributions to, or
8 investment returns or assets of the program or plans or IRAs
9 established under the program, to the extent permitted under federal
10 law, except for expenditures that are provided for through
11 appropriations from the Legislature.

12 (d) Facilitate compliance by the plans and IRAs established
13 under the program with all applicable requirements for the plans
14 under the Internal Revenue Code of 1986, including tax
15 qualification requirements, or, where applicable, ERISA, or any
16 other applicable law and accounting requirements, including
17 providing or arranging for assistance to plan sponsors and
18 individuals in complying with applicable law and tax qualification
19 requirements in a cost-effective manner.

20 (e) Cause the plans and IRAs established under the program to
21 be designed, established, and operated:

22 (1) In accordance with best practices for retirement savings
23 vehicles.

24 (2) To maximize participation, saving, and sound investment
25 practices, including the encouragement of automatic features,
26 including, but not limited to, automatic enrollment and investment.

27 (3) With simplicity, ease of administration, and portability of
28 benefits.

29 (f) Seek to minimize costs by assisting or facilitating the pooling
30 of small employers and individuals in purchasing retirement
31 savings plans, arrangements, and investments, and through
32 economies of scale, standardization, designation of investment
33 types, and other measures.

34 (g) Arrange for collective, common, and pooled investment of
35 assets of the retirement savings plans and IRAs, including
36 investment in conjunction with other funds with which those assets
37 are permitted to be collectively invested, with a view to saving
38 costs through efficiencies and economies of scale, but only to the
39 extent that these collective investment arrangements would not
40 jeopardize the exemption from ERISA of the plans maintained for

1 state and local government employees and would otherwise comply
2 with applicable law and conditions for favorable tax treatment.

3 (h) Disseminate to the citizens of California educational
4 information concerning saving, investment, planning for retirement,
5 and financial planning.

6 (i) Disseminate information concerning the tax credits available
7 to small business owners for establishing new retirement plans
8 and the federal saver's tax credit available to moderate- and lower
9 income households for saving in plans and IRAs.

10 (j) Submit progress and status reports to the Legislature and to
11 participating employers and individuals.

12 *(k) Submit reports to the Legislature, as follows:*

13 *(1) (A) The system shall submit a report to the Legislature at*
14 *least 90 days prior to implementing the program. This report shall*
15 *include, but not be limited to, information regarding the*
16 *expectations of the program, an outline of the program, and details*
17 *regarding administration of the program.*

18 *(B) If the system concludes that the program will not be*
19 *self-sustaining and finds it economically unfeasible to implement*
20 *the program, the system shall submit a report to the Legislature*
21 *regarding the details of its conclusion, including, but not limited*
22 *to, legal, financial, regulatory, and administrative considerations*
23 *and obstacles, and actions taken to address those concerns. This*
24 *report should also include any conditional changes that could be*
25 *made by the Legislature in order to implement the program.*

26 *(2) The system shall submit annual reports to the Legislature*
27 *on the status of the program, including, but not limited to, outreach,*
28 *investments, and solvency efforts.*

29 *(3) If the system finds it necessary to suspend the program, the*
30 *system shall submit a report to the Legislature at least 90 days*
31 *prior to that suspension. This report shall include, but is not limited*
32 *to, any conditional changes that need to be made by the Legislature*
33 *in order to continue the program.*

34 ~~(k)~~

35 *(l) If necessary, determine the eligibility of an employer,*
36 *employee, or other individual to participate in the program.*

37 ~~(l)~~

38 *(m) Create for employees who want to contribute a portion of*
39 *their paycheck to a plan or account offered by the program a*
40 *process by which they are able to notify their employers, either at*

1 the time of hiring or thereafter, and allow the employer to forward
2 the employee contribution to the program through the Employment
3 Development Department system currently used to collect payroll
4 taxes.

5 ~~(m)~~

6 (n) Allow employers to use the program to contribute to the
7 account on their employees' behalf or match their employees'
8 contribution.

9 *100005. The Employment Development Department may seek*
10 *reimbursement for any administrative costs associated with*
11 *implementing the program.*

12 *100005.5. (a) The system shall keep separate and distinct any*
13 *and all programs, accounts, plans, or IRAs established pursuant*
14 *to the program, and any and all funds of those programs, accounts,*
15 *plans, or IRAs, from all accounts and funds in the system. No funds*
16 *in the system's defined benefit plan shall be used to implement or*
17 *administer the program.*

18 *(b) All expenses and obligations created by, or pursuant to, the*
19 *program shall be funded solely from contributions to, or investment*
20 *returns or assets of, the programs, accounts, plans, or IRAs*
21 *established under the program, except as the Legislature may*
22 *provide for funding through appropriation.*

23 *100006. The system shall obtain the necessary approvals,*
24 *rulings, opinions, determinations, or confirmations from federal*
25 *authorities or agencies, including the Internal Revenue Service,*
26 *Department of Labor, or Securities and Exchange Commission. It*
27 *is intended that the plans and IRAs established under the program*
28 *shall adhere to all applicable standards and requirements under*
29 *federal law regulating the operation of retirement plans and the*
30 *offering, sale, or distribution of securities under those plans,*
31 *without regard to any exemption under federal law available to a*
32 *pension plan maintained by a governmental employer, and the*
33 *availability of this program shall be contingent on the requirements*
34 *of this section.*

35 *100008. No claim, tax lien, or other right of setoff of the state*
36 *or any of its agencies or instrumentalities shall apply against any*
37 *funds or assets held for the benefit of individuals in a plan or IRA*
38 *under the program or coming into the possession of a state official*
39 *under the program.*

1 100010. Present, future, and former board members of the
2 Public Employees' Retirement System, jointly and individually,
3 state officers and employees, and investment managers under
4 contract with the Public Employees' Retirement System shall be
5 indemnified from the General Fund and held harmless by the State
6 of California from all claims, demands, suits, actions, damages,
7 judgments, costs, charges, and expenses, including court costs and
8 attorney's fees, and against all liability, losses, and damages of
9 any nature whatsoever that they shall or may at any time sustain
10 by reason of any decision or action related to the initiation,
11 implementation, maintenance, or administration of the program.

12 100012. This program shall be made available only upon receipt
13 of all approvals that the system deems necessary for its
14 implementation.

15 100014. *This title shall become operative only if an annual*
16 *Budget Act appropriates moneys in amounts sufficient to implement*
17 *this title.*